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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,150	11/26/2003	Yoshifumi Ishihata	K6510.0064/P064	5542
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DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403			EXAMINER PIERCE, DAMON JOSEPH	
			ART UNIT 3714	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,150

Applicant(s)

ISHIHATA ET AL.

Examiner

DAMON PIERCE

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21, 23, 25, 29-33 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) 30, 33, 38, 39, 43 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21, 23, 25, 29, 31-32, 35-37, and 40-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Drafts/Person's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The examiner acknowledges the amendments of claims filed on 6/9/10. Claims 1-20, 22, 24, 26-28, 34 are cancelled. Thus, although claims 21, 23, 25, 29-33, 35-44 are pending; claims 30, 33, 38-39, and 43-44 are withdrawn; therefore, claims 21, 23, 25, 29, 31-32, 35-37, and 40-42 are being examined on the merits.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 21, 23, 25, 29, 31-32, 35-37, and 40-42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Specifically, the claims include the following recitations, which lack support in the original specification and is thus deemed new matter:

- (regarding claims 21, and 31) "excluding any target character which is currently in the outer zone and any target character which has moved in the second zone from the outer zone within said certain period of time"; and

- (regarding claims 21, 31, 35, 36, 40, and 41) "allow the player to lock the attack on the object selected", and "...the target character selected by the player is as the target currently locked-on to be attacked".

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 21 includes the recitation "A game program computer readably stored in a storage medium..." (emphasis added) in the preamble, which is unclear whether the game program is a computer or the game program is readable by a computer.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 21, 23, 25, 29, and 35-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim language, "A game program computer readably stored in a storage medium..", and "A game program computer-readably stored in a storage medium..." as presented covers the form of a

transitory propagating signal per se. However, adding the limitation "non-transitory" to the claims would overcome this 35 U.S.C. 101 rejection. See attachment titled "101 CRM OG Notice" for further details.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 35-37, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falcon 4.0 game manual (herein referred to as Falcon).

Regarding claims 35, 36, 40, 41, Falcon discloses an electronic device provided with a controller operable by a game player and configured to display game scenes of an action game progressing in a game space in response to the operation of the

controller, and a game program computer-readably stored in a storage medium and configured to cause a computer to :

(a) provide a game space in which a player character moves in response to an operation of a game player and in which a plurality of target characters move as attack targets (Chapter 4, "Air-to-Air Weapons" and pps. BM-25 to BM-26, discloses that Falcon is a flight simulator computer game having an aircraft as the player character that moves in the game space using a radar display, and other game objects such as targets and/or enemies planes as other characters, for example see pg. 4-3, Head-Up Display, HUD, pg. 4-5 and Fig. 13-6, "HUB Scan ACM Submode");

(b) displaying a game scene with plural target characters, which move within a visual range viewed from the player character, on a monitor display connected to the computer (Pg. 4-2 to 4-3, discloses Air Combat Maneuvering, ACM, radar modes are used to lock the radar onto aircraft that are within visual range, where the visual range is determined by distance from the player's aircraft, in this case, the enemy characters having the closest or smallest distance to the player's aircraft are more suitable to attack first because they are the most likely to attack the player character first);

(c) set a first zone, a second zone set outside of and next to the first zone, and an outer zone set outside of and next to the second zone at every time when the player character moves in the game space, wherein said first, second, and outer zones are defined within said visual range based on one of distances from a reference point and angles from a reference line, which reference point or line is

defined based on the current location of the player character, so that first zone is nearest to the reference point or line (Pg. 4-2, discloses radar modes, some radar modes are for use within visual range and others are for beyond visual range, for example, pg. 4-6 discloses BVR (Beyond Visual Range), also note, weapon ranges are based on distances, for example, see pg. 4-25, discloses SRM (short-range missile), and MRM (Medium-Range Missile), and pg. 21-25, discloses long-range radar-guided missiles, thus, there are instances where a target is available for an attack, and safe from an attack based on distances and positions relative to a player aircraft, note pg. 4-8 provides specific examples of ranges in terms of miles);

(d) detect a current value of the parameter with respect to each of said plurality of target characters displayed within the visual range (see pg. 21-11, shows an example where the distance and space between game character and other objects are continuously tracked in the video game);

(e) select any target character which has been in the first zone within a certain period of time but excluding any character which has been in the outer zone within a said certain period of time (note: any targets within weapon distance range are attackable by the player aircraft, whereas any targets within weapon distance range(s) are attackable by the player aircraft and any targets outside the weapon distance range(s) are safe from an attack);

(f) invest recommended priorities of selections to the respective target characters selected at (e) as candidate objects for attack in accordance with the current locations so that the candidate object located nearer to the reference

point or line is given the higher priority (lacking distinguishing features, see pps. 4-13 to 4-14 discloses the radar immediately locking onto the first targets it sees, and allowing the player to cursor through targets to select, lock, and attack a target of his/her choice, targets selection order is based the order in which target objects appear within the radar screen of the player's aircraft, in this case, the selection order is decided by the which objects are closest to the player's aircraft);

(g) allow the player to change the candidate object for attack, in accordance with the order of the priorities sequentially from the higher to the lower in response to operation by the game player (lacking distinguishing features, see pps. 4-13 to 4-14 discloses the radar immediately locking onto the first targets it sees, and allowing the player to cursor through targets to select, lock, and attack a target of his/her choice, targets selection order is based the order in which target objects appear within the radar screen of the player's aircraft, in this case, the selection order is decided by the which objects are closest to the player's aircraft); and

(g) allow the player to lock the attack on the target object selected at (g) while the selected target object is within said first or second zone (pg. 4-14, discloses where the player can manually select the order in which he/she wants to attack targets).

wherein said reference point is set at a point at which the player character is currently located in said game space (see pps. 4-2 and 21-11, in this case, the reference place is the player aircraft nose), and

wherein said recommended priorities are decided based on distances of the target characters from said point set as the reference point, respectively (pg. 4-8, where distances are determined from the player aircraft nose).

Response to Arguments

10. Applicant's arguments filed 6/9/10 have been fully considered but they are not persuasive.

11. Regarding claims 35-37 and 40-42, the rejections above provide citations that read on the claim language.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAMON PIERCE whose telephone number is (571)270-1997. The examiner can normally be reached on 8AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry. Suhol/
Supervisory Patent Examiner, Art
Unit 3714

DJP